



# House of Representatives

General Assembly

**File No. 626**

February Session, 2004

Substitute House Bill No. 5160

*House of Representatives, April 20, 2004*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING NEW HOME CONSTRUCTION CONTRACTORS AND HOME IMPROVEMENT CONTRACTORS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-417d of the general statutes, as amended by  
2 section 93 of public act 03-3 of the June 30 special session and section  
3 146 of public act 03-6 of the June 30 special session, is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2004*):

5 (a) A new home construction contractor shall (1) prior to entering  
6 into a contract with a consumer for new home construction, provide to  
7 the consumer a copy of the new home construction contractor's  
8 certificate of registration and a written notice that (A) discloses that the  
9 certificate of registration does not represent in any manner that such  
10 contractor's registration constitutes an endorsement of the quality of  
11 such person's work or of such contractor's competency by the  
12 commissioner, (B) advises the consumer to contact the Department of  
13 Agriculture and Consumer Protection to determine (i) if such

14 contractor is registered in this state as a new home construction  
15 contractor, (ii) if any complaints have been filed against such  
16 contractor, and (iii) the disposition of any such complaints, and (C)  
17 advises the consumer to request from such contractor a list of  
18 consumers of the last twelve new homes constructed to completion by  
19 the contractor during the previous twenty-four months [.] or, if the  
20 contractor has not constructed at least twelve new homes to  
21 completion during the previous twenty-four months, then a list of all  
22 consumers for whom the contractor has constructed a new home to  
23 completion during the previous twenty-four months, and to contact  
24 several individuals on the list to discuss the quality of such contractor's  
25 new home construction work, (2) state in any advertisement, including  
26 any advertisement in a telephone directory, the fact that such  
27 contractor is registered, and (3) include such contractor's registration  
28 number in any such advertisement. The new home construction  
29 contractor, or [his] such contractor's agent, shall also discuss with the  
30 consumer the installation of an automatic fire extinguishing system in  
31 a new home.

32 (b) No new home construction contract shall be valid or enforceable  
33 against a consumer unless (1) the original contract (A) is in writing and  
34 signed by the consumer and the new home construction contractor,  
35 and (B) contains the date of transaction, the name and business  
36 address of the new home construction contractor and a starting date  
37 and estimated completion date as described in this subsection, (2) any  
38 oral change orders are reduced to writing signed by the consumer and  
39 the new home construction contractor prior to the contract completion  
40 date, and the original contract and all written and oral change orders  
41 contain the entire agreement between the consumer and the new home  
42 construction contractor, and (3) it is entered into by a registered new  
43 home construction contractor. For the purpose of this subsection, the  
44 starting date shall be the date on which the new home construction  
45 contractor begins to perform its obligations under the contract,  
46 including any work that constitutes a substantial portion of the  
47 contracted work, as defined in subsection (e) of this section; and the  
48 estimated completion date shall be extended by any changes in the

49 completion date occurring due to change orders agreed to by the  
50 consumer and the new home construction contractor, or due to  
51 government intervention or an act of God.

52 [(b)] (c) A new home construction contractor shall include in every  
53 contract with a consumer a provision advising the consumer that the  
54 consumer may be contacted by such contractor's prospective  
55 consumers concerning the quality and timeliness of such contractor's  
56 new home construction work, unless the consumer advises such  
57 contractor, in writing, at the time the contract is executed, that the  
58 consumer prefers not to be contacted.

59 [(c)] (d) The written notice required in subsection (a) of this section  
60 shall be in capital letters not less than ten-point bold face type, and  
61 may include a statement in substantially the following form:

62 "NEW HOME CONSTRUCTION CONTRACTOR

63 REGISTRATION NOTICE

64 A CERTIFICATE OF REGISTRATION AS A NEW HOME  
65 CONSTRUCTION CONTRACTOR DOES NOT REPRESENT IN ANY  
66 MANNER THAT THE CONNECTICUT DEPARTMENT OF  
67 AGRICULTURE AND CONSUMER PROTECTION ENDORSES THE  
68 QUALITY OF THE CONTRACTOR'S NEW HOME CONSTRUCTION  
69 WORK OR THE CONTRACTOR'S COMPETENCY TO ENGAGE IN  
70 NEW HOME CONSTRUCTION.

71 ACCORDINGLY, YOU ARE ADVISED TO:

72 (1) REQUEST FROM THE CONTRACTOR A LIST OF  
73 CONSUMERS OF THE LAST TWELVE NEW HOMES  
74 CONSTRUCTED TO COMPLETION BY THE CONTRACTOR  
75 DURING THE PREVIOUS TWENTY-FOUR MONTHS, OR IF THE  
76 CONTRACTOR HAS NOT CONSTRUCTED AT LEAST TWELVE  
77 NEW HOMES TO COMPLETION DURING THE PREVIOUS  
78 TWENTY-FOUR MONTHS, THEN A LIST OF ALL CONSUMERS  
79 FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW

80 HOME TO COMPLETION DURING THE PREVIOUS TWENTY-  
81 FOUR MONTHS,

82 (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO  
83 DISCUSS THE QUALITY AND THE TIMELINESS OF THE  
84 CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND

85 (3) CONTACT THE DEPARTMENT OF AGRICULTURE AND  
86 CONSUMER PROTECTION TO VERIFY THE REGISTRATION  
87 INFORMATION PRESENTED BY THE CONTRACTOR AND TO  
88 ASCERTAIN THE CONTRACTOR'S COMPLAINT HISTORY WITH  
89 THE DEPARTMENT.

90 IN ADDITION, YOU ARE ADVISED TO DISCUSS WITH THE  
91 NEW HOME CONSTRUCTION CONTRACTOR:

92 (1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE  
93 POLICY AND IF SO, THE IDENTITY OF THE PERSON  
94 DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT  
95 ABOUT THE CONTRACTOR'S WORK,

96 (2) WHETHER THE CONTRACTOR WILL HOLD YOU  
97 HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR  
98 HIRED BY THE CONTRACTOR, AND

99 (3) THE INSTALLATION OF AN AUTOMATIC FIRE  
100 EXTINGUISHING SYSTEM.

101 THIS NOTICE DOES NOT CONTAIN AN EXHAUSTIVE LIST OF  
102 THE INQUIRIES YOU SHOULD MAKE BEFORE CONTRACTING  
103 WITH A NEW HOME CONSTRUCTION CONTRACTOR.  
104 ADDITIONAL INFORMATION TO ASSIST YOU IN YOUR  
105 SELECTION OF A NEW HOME CONSTRUCTION CONTRACTOR  
106 MAY BE OBTAINED BY CONTACTING THE CONNECTICUT  
107 DEPARTMENT OF AGRICULTURE AND CONSUMER  
108 PROTECTION."

109 [(d)] (e) No person shall: (1) Present, or attempt to present as such

110 person's own, the certificate of another; (2) knowingly give false  
111 evidence of a material nature to the commissioner for the purpose of  
112 procuring a certificate; (3) represent such person falsely as, or  
113 impersonate, a registered new home construction contractor; (4) use or  
114 attempt to use a certificate which has expired or which has been  
115 suspended or revoked; (5) engage in the business of a new home  
116 construction contractor or hold himself or herself out as a new home  
117 construction contractor without having a current certificate of  
118 registration under sections 20-417a to 20-417i, inclusive, as amended,  
119 and subsection (b) of section 20-421; (6) represent in any manner that  
120 such person's registration constitutes an endorsement of the quality of  
121 such person's work or of such person's competency by the  
122 commissioner; or (7) fail to refund a deposit paid to a new home  
123 construction contractor not later than ten days after a written request  
124 mailed or delivered to the new home construction contractor's last  
125 known address, if (A) the consumer has complied with the terms of the  
126 written contract up to the time of the request, (B) no substantial  
127 portion of the contracted work has been performed at the time of the  
128 request, (C) more than thirty days has elapsed since the starting date  
129 specified in the written contract or more than thirty days has elapsed  
130 since the date of the contract if such contract does not specify a starting  
131 date, and (D) the new home construction contractor has failed to  
132 provide a reasonable explanation to the consumer concerning such  
133 contractor's failure to perform a substantial portion of the contracted  
134 work. For purposes of this subdivision, "substantial portion of the  
135 contracted work" includes, but is not limited to, work performed by  
136 the new home construction contractor to (i) secure permits and  
137 approvals, (ii) redraft plans or obtain engineer, architect, surveyor or  
138 other approvals for changes requested by the consumer or made  
139 necessary by site conditions discovered after the contract is executed,  
140 (iii) schedule site work or arrange for other contractors to perform  
141 services related to the construction of the consumer's new home, and  
142 (iv) do any other work referred to in the contract as a "substantial  
143 portion of the contracted work".

144 (f) Nothing in this section shall limit the right of a new home

145 construction contractor who fails to comply with the registration  
146 requirements of this chapter or the written contract requirements of  
147 this section to seek recovery against a consumer for the reasonable  
148 value of the services or materials that such new home construction  
149 contractor rendered to such consumer based on common law  
150 restitutionary causes of action including, but not limited to, quantum  
151 meruit, quasi contract, implied contract and unjust enrichment.

152       Sec. 2. Section 20-417e of the general statutes, as amended by section  
153 2 of public act 03-167, is repealed and the following is substituted in  
154 lieu thereof (*Effective October 1, 2004*):

155       In addition to any other remedy provided for in sections 20-417a to  
156 20-417i, inclusive, as amended, [and subsection (b) of section 20-421,]  
157 any person who violates any provision of [subsection (d)] subdivisions  
158 (1) to (6), inclusive of subsection (e) of section 20-417d, as amended by  
159 this act, shall be guilty of a class A misdemeanor. Notwithstanding  
160 subsection (d) of section 53a-29 or section 54-56e, as amended, if the  
161 court determines that a contractor cannot fully repay any victim of the  
162 violations committed by the contractor within the period of probation  
163 established in subsection (d) of section 53a-29 or section 54-56e, as  
164 amended, the court may impose probation for a period of not more  
165 than five years. Any person who violates the provisions of subdivision  
166 (7) of subsection [(d)] (e) of section 20-417d, as amended by this act,  
167 shall be liable for treble damages and shall be guilty of a class A  
168 misdemeanor. Notwithstanding section 54-193, such person may be  
169 prosecuted within three years after such violation.

170       Sec. 3. Subsection (c) of section 20-427 of the general statutes is  
171 repealed and the following is substituted in lieu thereof (*Effective*  
172 *October 1, 2004*):

173       (c) In addition to any other remedy provided for in this chapter, (1)  
174 any person who violates any provision of subsection (b) of this section,  
175 except [subdivision (8)] subdivision (6), (7) or (8) of said subsection (b),  
176 shall be guilty of a class [B] A misdemeanor, and (2) any person who  
177 violates the provisions of subdivision (8) of subsection (b) of this

178 section shall be guilty of a class B misdemeanor if the home  
179 improvement that is offered or made has a total cash price of [ten] one  
180 thousand dollars or less and shall be guilty of a class A misdemeanor if  
181 the home improvement that is offered or made has a total cash price of  
182 more than [ten] one thousand dollars. Any person who violates the  
183 provisions of subdivision (6) or (7) of subsection (b) of this section shall  
184 be guilty of a class B misdemeanor. Notwithstanding subsection (d) of  
185 section 53a-29 or section 54-56e, as amended, if the court determines  
186 that a contractor cannot fully repay his victims within the period of  
187 probation established in subsection (d) of section 53a-29 or section 54-  
188 56e, as amended, the court may impose probation for a period of not  
189 more than five years. A violation of any of the provisions of this  
190 chapter shall be deemed an unfair or deceptive trade practice under  
191 subsection (a) of section 42-110b.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Consumer Protection, Dept.	GF - None	None	None
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:** None**Explanation**

The bill makes various changes to new home construction contract laws. Under the bill the statute of limitations is increased from 1 to 3 years and certain criminal penalties are increased from a class B misdemeanor to a class A misdemeanor. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both. A class B misdemeanor is punishable by up to 6 months in prison, a fine of up to \$500, or both. This could result in a potential revenue gain for the Judicial Department.



**OLR Bill Analysis**

sHB 5160

**AN ACT CONCERNING NEW HOME CONSTRUCTION CONTRACTORS AND HOME IMPROVEMENT CONTRACTORS****SUMMARY:**

This bill makes new home construction contracts invalid and unenforceable against consumers unless (1) certain provisions are in the contract, (2) change orders are written and signed, and (3) the contract is between a consumer and a registered new home construction contractor.

The bill also states that it does not limit the right of a new home contractor to sue a consumer to recover the reasonable value of his services or materials even if the contractor has failed to comply with the laws requiring him to (1) register with the state or (2) use a written contract containing mandatory notices and provisions. Such suits must be based on common law restitutionary causes of action including *quantum meruit*, quasi contract, implied contract, and unjust enrichment.

The bill extends the statute of limitations from one to three years for violations of the law requiring the return of a consumer's deposit if certain conditions are met.

Finally, it increases certain criminal penalties in the Home Improvement Act.

EFFECTIVE DATE: October 1, 2004

**NEW HOME CONSTRUCTION CONTRACT PROVISIONS**

The bill makes new home construction contracts invalid and unenforceable against a consumer unless (1) the original contract (a) is written and signed by both the consumer and the contractor and (b) contains the transaction date, name and business address of the contractor, starting date, and estimated completion date; (2) change orders are written and signed by both parties before the contract completion date and the original contract and the change orders

together constitute the entire agreement between the parties; and (3) the contract is entered into between a registered new home contractor and a consumer.

For this purpose and the law's provisions on failure to return deposits, the starting date is the date on which the contractor begins to perform a "substantial portion of the contracted work," which includes (1) securing permits and approvals; (2) redrafting plans or obtaining engineer, architect, surveyor, or other approvals for changes requested by the consumer or made necessary by site conditions discovered after the contract was signed; (3) scheduling site work or arranging for other contractors to perform other services; and (4) doing any other work referred to as "substantial portion of the contracted work" in the contract.

### **STATUTE OF LIMITATIONS ON PROSECUTIONS FOR FAILURE TO RETURN DEPOSITS**

Generally, the statute of limitations for prosecuting a class A or B misdemeanor is one year after the offense was committed. The bill extends this to three years for a new home contractor who fails to refund a deposit within 10 days after a written request sent to the contractor's last-known business address if: (1) the consumer has complied with the terms of the contract up to the time of the request, (2) no substantial portion of the contracted work has been performed, (3) more than 30 days have passed since (a) the specified starting date or (b) the contract date if the contract does not specify a starting date, and (4) the contractor has not provided a reasonable explanation concerning his failure to perform.

### **HOME IMPROVEMENT ACT PENALTIES**

The bill increases, from a class B to a class A misdemeanor, the penalty for (1) presenting, or attempting to present, another's registration certificate; (2) knowingly giving false evidence of a material nature to the commissioner to obtain a registration certificate; (3) falsely representing to be a registered contractor or salesman; (4) using or attempting to use an expired, suspended, or revoked registration certificate; and (5) offering to make or making a home improvement without being registered as a home improvement contractor. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both. A class B misdemeanor is punishable by up to six

months in prison, a fine of up to \$500, or both.

The law makes it a class B misdemeanor for a home improvement contractor to fail to refund a deposit within 10 days after a written request is sent to the contractor's last-known business address if (1) no substantial portion of the contracted work has been performed and (2) more than 30 days have passed since (a) the specified starting date or (b) the contract date if the contract does not specify a starting date, and (3) the contract is worth \$10,000 or less. It is a class A misdemeanor if the contract is worth more than that amount. The bill lowers the threshold for the enhanced penalty from \$10,000 to \$1,000.

## **BACKGROUND**

### ***Quantum Meruit***

"*Quantum meruit*" literally means "as much as he has deserved," and is centered on the prevention of injustice. *Quantum meruit* strikes appropriate balance by evaluating equities and guaranteeing that party who has rendered services receives a reasonable sum for those services (*Gagne v. Vaccaro*, 255 Conn. 390).

### ***Quasi Contract***

A "quasi contract" is not a contract, but rather an obligation which law creates out of circumstances present, even though a party did not assume an obligation, and may not have intended but in fact actually dissented from it (*Brighenti v. New Britain Shirt Corp.*, 167 Conn. 403).

### ***Implied Contract***

An "implied contract" is an agreement between the parties which is not expressed in words but which is inferred from their acts and conduct (*Brighenti v. New Britain Shirt Corp.*, 167 Conn. 403).

### ***Unjust Enrichment***

A right of recovery under the doctrine of "unjust enrichment" is essentially equitable, its basis being that, in a given situation, it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another (*Fitzpatrick v. Scalzi*, 72 Conn.App. 779).

***Legislative History***

The House referred the bill (File 173) to the Judiciary Committee on March 30. It favorably reported a substitute bill on April 6 that added the provision protecting a contractor's right sue the consumer for the value of services and materials after the contractor's failure to comply with state law by (1) registering with the state or (2) using a written contract containing mandatory notices and provisions.

**COMMITTEE ACTION**

## General Law Committee

Joint Favorable Substitute

Yea 19      Nay 0

## Judiciary Committee

Joint Favorable Substitute

Yea 37      Nay 0